



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0480]

Commercial Driver's License Standards: Application for Exemption; CRST Expedited

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant CRST Expedited (CRST) an exemption from the regulation that requires a commercial learner's permit (CLP) holder to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. Under the terms and conditions of this exemption, a CLP holder who has documentation of passing the CDL skills test may drive a commercial motor vehicle (CMV) for CRST without being accompanied by a CDL holder in the front seat of the vehicle. The exemption enables CLP holders to drive as part of a team and have the same regulatory flexibility as CRST team drivers with CDLs. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE TWO YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942-6477. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from some of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption, and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

CRST is one of the nation's largest transportation companies with a fleet of more than 4,500 CMVs. CRST seeks an exemption from 49 CFR 383.25(a)(1) that would

allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, to drive a truck without a CDL holder being present in the front seat of the vehicle. CRST indicates that the CDL holder will remain in the vehicle at all times while the CLP holder is driving—just not in the front seat. This would allow a CLP holder to participate in a revenue-producing trip back to his or her State of domicile to obtain the CDL document, as the CDL can only be issued by the State of domicile in accordance with 49 CFR part 383.

CRST noted the trucking industry's need for qualified and well-trained drivers to meet increasing shipping demands. CRST believes that 49 CFR 383.25(a)(1) limits its ability to efficiently recruit, train, and employ new entrants to the industry. Prior to the implementation of section 385.25(a)(1), States routinely issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL allowed CRST time to route the new driver to his or her State of domicile to obtain the permanent CDL and place the new driver into an on-the-job training position with a driver-trainer. The driver-trainer supervised and observed the new driver, but was not required to be on duty and in the front seat at all times. Thus, the new driver became productive immediately, allowing more freight movement for CRST and compensation for the new driver.

CRST contends that compliance with the CDL rule places them in a very difficult position regarding how they return CLP holders who have passed their skills testing to their State of domicile to obtain their CDL. According to CRST, the two possible courses of action in this scenario are simple, yet costly: (1) CRST sends CLP holders to their home State by public transportation to obtain the CDL and hopes the

drivers return to CRST for employment; or (2) CRST sends CLP holders back to their home State as passengers on one of its trucks. Granting the exemption would allow the CLP holder to drive as part of a team on that trip, resulting in reduced costs and increased productivity.

CRST asserts that the exemption would be consistent with the Agency's comments in the preamble to the final rule adopting § 383.25 that "FMCSA does not believe that it is safe to permit inexperienced drivers who have not passed the CDL skills test to drive unaccompanied." (76 FR 26854, 26861 May 9, 2011). The exemption sought would apply only to those CRST drivers who have passed the CDL skills test and hold a CLP. CRST believes that the exemption would result in a level of safety that is equivalent to or greater than the level of safety provided under the rule. The only difference between a CLP holder who has passed the CDL skills test and a CDL holder is that the latter has received the actual CDL document from a State driver licensing agency.

Public Comments

On January 5, 2016, FMCSA published notice of this application and requested public comment (81 FR 291). The Agency received 56 comments. Most of the comments opposed to the CRST request were from truck drivers, driver-trainers, and other individuals. These respondents do not believe that it is safe for a CLP holder to operate a CMV without the supervision of a CDL driver-trainer in the front seat of the truck.

The Iowa Motor Truck Association (IMTA) supported the exemption request, commenting that if CLP holders are properly trained and tested, the fact that they have not yet obtained their CDL credential would in no way compromise the safety of the

operation. IMTA added that granting this exemption would enhance the productivity while maintaining the safety of CRST's operation. It would also give the applicant flexibility to allow a CLP holder who has successfully passed all CDL exams to operate more freely and in a way that benefits the driver, the carrier and the economy as a whole. According to IMTA, one of the issues with the current CLP rule is the fact that it's not always convenient to allow the CLP driver to return to their home state immediately after completing training and passing their CDL exam. The exemption would allow these drivers to join a team operation, and give CRST the time to get CLP holders through their State of domicile at a future time to complete the conversion of the CLP to a CDL. IMTA is confident in the safety and performance of CRST and believe that, if granted, these drivers would operate safely within the terms of their exemption.

Opposing the exemption were three industry groups, the Advocates for Highway and Auto Safety (Advocates), the Owner-Operator Independent Drivers Association (OOIDA), and the International Brotherhood of Teamsters (IBT).

Advocates commented that "FMCSA must reject the CRST application because it undermines existing Federal safety regulations, and will usurp the exclusive authority of states to determine who should be granted commercial driving privileges associated with the issuance of a CDL. The Application also fails to evaluate any potential safety risk to the public or address alternative means of pursuing the goal of the exemption. The Application appears to be an obvious attempt to increase company profits while ignoring the potentially significant increase in truck crash risk to the motoring public."

OOIDA believes the exemption sought by CRST is not in the interest of highway safety, will put OOIDA members who share the road with these poorly trained drivers at

risk, and fails to demonstrate that an exemption would result in “a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption” as set forth in 49 U.S.C. 31315(b). Further, OOIDA states that CRST does not demonstrate that it is “significantly burdened” by the existing regulation and rather only demonstrates a desire to increase productivity and preserve CRST’s current business practices.

OOIDA finds the request fails to meet the applicable standards the FMCSA must consider and is ill-timed, considering FMCSA is currently reviewing entry-level driver training standards.

In a similar vein, IBT commented, “It is clear from CRST’s application that it is more concerned about saving money and retaining the investment that it has made in the training of the driver than making sure that the CLP holder receives the proper mentoring and supervision needed for first time CLP holders while they gather their behind-the-wheel training. Neither the DOT nor the FMCSA should entertain the relaxing of important safety standards so that motor carriers have a better opportunity to retain drivers that they have trained. The idea that a driver may not return to the company that provided his/her training has more to do with overall pay and benefits that the motor carrier may be offering in the long term than the time or distance traveled for the CLP holder to obtain a CDL from the CLP holder’s home state in the short term. Neither should it be a goal of the DOT or FMCSA to ‘promote greater productivity’ for a motor carrier or allow CLP holders to ‘actively earn a living faster.’ The department’s goal should be safety. Finally, the IBT feels strongly that there is no substituting the skills test for behind-the-wheel training of CLP holders by experienced CDL holders in the front seat of the CMV.”

FMCSA Response and Decision

The premise of respondents opposing the exemption is that CLP holders lack experience and are safer drivers when observed by a CDL driver-trainer who is on duty and in the front seat of the vehicle. The fact is that CLP holders who have passed the CDL skills test are qualified and eligible to obtain a CDL. If these CLP holders had obtained their training and CLPs in their State of domicile, they could immediately obtain their CDL at the State driver licensing agency and begin driving a CMV without any on-board supervision. There is no data showing that having a CDL holder accompany a CLP holder who has passed the skills test improves safety. Because these drivers have passed the CDL skills test, the only thing necessary to obtain the CDL is to visit the Department of Motor Vehicles office in their State of domicile.

FMCSA has evaluated CRST's application for exemption and the public comments. The Agency believes that CRST's overall safety performance, as reflected in its "satisfactory" safety rating, will enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption is restricted to CRST's CLP holders who have documentation that they have passed the CDL skills test. The exemption will enable these drivers to operate a CMV as a team driver without requiring the accompanying CDL holder be on duty and in the front seat while the vehicle is moving.

Terms and Conditions of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 383.25(a)(1) is effective during the period of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

through [INSERT DATE TWO YEARS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Extent of the Exemption

The exemption is contingent upon CRST maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of- service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid driver’s license and CLP with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

This exemption from 49 CFR 383.25(a)(1) will allow CRST drivers who hold a CLP and have successfully passed a CDL skills test, to drive a CMV without a CDL holder being present in the front seat of the vehicle. The CDL holder must remain in the vehicle at all times while the CLP holder is driving—just not in the front seat.

Preemption

During the period this exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

CRST must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing this exemption. The notification must be by email to MCPSD@DOT.GOV, and include the following information:

- a. Exemption Identifier: “CRST”

- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- d. Driver's name and driver's license number,
- e. Vehicle number and State license number,
- f. Number of individuals suffering physical injury,
- g. Number of fatalities,
- h. The police-reported cause of the accident,
- i. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- j. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the CLP-holders covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: September 12, 2016

T.F. Scott Darling, III
Administrator

